

in particular the rights of the defence and the principle of the independence of the judiciary. The report therefore notes additional information provided by the source asserting: the lawyers of the defendants received power of attorney only at the end of the inquiry and were therefore unable to follow the preliminary investigation and to examine the files prior to the trial; the principle of adversarial proceedings was not observed at the trial before the State Security Court, thereby preventing the defence from challenging the evidence presented by the prosecution and not having the right to produce evidence in favour of the defendants or to examine witnesses; the State Security Court does not offer sufficient guarantees of independence or, even more, of impartiality, because (a) its members are appointed by a restricted committee presided over by the Minister of Justice or his Counsellor, (b) under the Court's statutes judges have a mandate of four years but one of the judges, who is a member of the armed forces, has been serving on the bench since 1987 and, (c) the judicial inquiry is carried out by the Public Prosecutor's Office and by the Police, and not by an independent judge; and, on account of the above the State Security Court depends on the Executive and administers justice in a partial manner, in accordance with the government's interests. The WG considered that the shortcomings indicated by the source related to the right to a fair trial and constituted a violation of articles 10 and 11 of the Universal Declaration and of article 14 (1) and (2) of the ICCPR and were so grave as to confer on the deprivation of freedom an arbitrary character. The WG therefore declared the detention of the six individuals to be arbitrary.

Disappearances, Working Group on enforced or involuntary: (E/CN.4/1997/34, paras. 11, 12, 348-358)

The Working Group (WG) transmitted 12 newly reported cases of disappearance to the government, half of which were reported to have occurred during 1996. Seventy-eight cases remain to be clarified. Of all the cases handled by the WG, the majority occurred in south-east Turkey, where a state of emergency is in force, particularly in the context of clashes between Kurdish Workers' Party (PKK) guerrillas and government security forces. The report notes that the victims of the newly reported cases were all males, ranging in age from 18 to 62, and included members of political parties, villagers, a shop owner and a veterinary student. In most cases, the individuals had been detained while in their houses or in public places, forced into a police or military vehicle and were never seen again. In response to inquiries by family members or lawyers, the authorities denied that the person had ever been detained.

The report also notes that, in addition to the individual cases of disappearance, the WG continued to receive information indicating that as part of the effort to fight the PKK, harassment and attacks against civilians suspected of having links with the PKK were being committed and that there was a strong possibility that in the conflict between the government and the PKK, civilians not directly involved in the combat were becoming targets of both the Turkish security forces and the PKK guerrillas. In this context, the report notes that information has also been received about abuses committed by the PKK.

In the report the existence of a state of emergency is seen to be a major obstacle to the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance since it has led to the excessive concentration of power in the hands of the authorities. Impunity is also noted as a contributing factor in the continuation of violations of human rights in Turkey and the report observes that although members of the security forces are mentioned as being responsible for most enforced disappearances, they are never brought to trial or prosecuted. Information has also indicated that: procedures set out in the Turkish Code of Criminal Procedure for the prompt and appropriate registration of detainees and notification of their families are disregarded in the south-eastern provinces; long detention periods are permitted under Turkish laws; under the Anti-Terror Law, suspects in the provinces under a state of emergency can be held in custody without access to their family, friends or lawyer for 30 days; an amendment to the Code of Criminal Procedure in 1992 which introduced the right of a defendant to have access to a lawyer at any stage of the proceedings, including custody, excluded terrorist offences from this provision.

The report summarizes the response of the government to the cases transmitted, stating that in five people had been released, in four other cases there were no records of the detention or arrest, two people appeared to have fled the country and one person had managed to avoid arrest.

The Working Group acknowledged that states may derogate from some human rights responsibilities in times of public emergencies but also stated that under article 7 of the Declaration, no circumstances whatsoever may be invoked to justify enforced disappearances.

Extrajudicial, summary or arbitrary execution, Special Rapporteur on: (E/CN.4/1997/60, paras. 15, 16, 17, 18, 19, 22, 32, 33, 35, 46, 51, 52, 57, 64, 67, 68, 96; E/CN.4/1997/60/Add.1, paras. 478-502)

The report notes that the Special Rapporteur (SR) continued to receive allegations about violations of the right to life in Turkey and that half of them concerned violations of the right to life in the south-east part of Turkey. Victims included Kurdish villagers, students, journalists and members of political parties and the largest number of casualties reported appeared to be a result of killings during raids and military operations conducted against the Kurdish Workers Party (PKK). The report cites information indicating that, since the conflict started, thousands of Kurdish villages have been burned down and their inhabitants forcibly evicted, and more than 3,000 civilians have been killed. Information referring to links between persistent impunity in the country and the existence of a state of emergency also continues to be received and the report notes that the establishment of a state of emergency, in force in 10 provinces in south-east Turkey, has led to the excessive concentration of power in the hands of the authorities as illustrated by the fact that: decrees issued under the State of Emergency Law are immune from judicial challenge; some of the decrees have provided extensive powers to the regional governor of areas where a state of emergency is in force; Decree 430 of 16 December 1990 declares that no criminal, financial or legal responsibility may be claimed against such regional governors and no application shall be